

# Exhibit 2

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE

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FIRST HORIZON NATIONAL	:	Civil Action No.
CORPORATION, et al.,	:	2:11-CV-02608
Plaintiffs,	:	
vs.	:	
CERTAIN UNDERWRITERS AT	:	
LLOYD'S, et al.,	:	
Defendants.	:	

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VIDEOTAPED DEPOSITION OF  
BRIAN P. VAHEY, JR.,

TRANSCRIPT of testimony as taken by  
and before MONIQUE VOUTHOURIS, a Certified Court  
Reporter, RPR, CRR and Notary Public of the States  
of New Jersey and New York, at the offices of  
Troutman Sanders, LLP, 405 Lexington Avenue, New  
York, New York, on Wednesday, December 11, 2013,  
commencing at 10:09 a.m.

1           A.       No. In both cases, the investing -- the  
2 investors are alive and well, they are big  
3 institutional investors.

4           Q.       Who are the institutional investors who  
5 retained you?

6           A.       Just trying to determine what I'm  
7 allowed to talk about. Well, Dexia would be one; I  
8 think I'm allowed to say that. I'm not -- I'm not  
9 supposed -- we're not supposed to talk about the --  
10 as the terms of the settlement we weren't supposed to  
11 disclose much of what was done. And I will say the  
12 other client was a very large pension fund.

13          Q.       Okay. Well, I don't want to ask you  
14 anything that might be protected by confidentiality  
15 agreements. But could you generally describe the  
16 types of issues that you discussed and the reports  
17 you prepared for those matters?

18          A.       That, I can. It -- so it was dealing  
19 with fraud, with fraud, mis -- and distinctly the  
20 language that was used in the prospectus as to what  
21 was actually done in the investment. So it was -- we  
22 said residential mortgage-backed securities, and the  
23 investors had bought some of these securities on, you  
24 know, some of their factfinding or diligence was  
25 based on what the prospectus or prospectus

1 supplement, excuse me, had inside of it.

2 And it turns out that there were  
3 representations made inside the prospectus that the  
4 mortgages that I spoke of generally earlier about,  
5 you know, they are put into the trust, they were  
6 supposedly of a certain quality, and it was  
7 represented that the quality was met. And then, as  
8 things unfolded, the mortgage loans failed to a high  
9 degree, and so folks were questioning how that could  
10 be if the quality was as good as it was purported.

11 And so this lawsuit came out of that and  
12 one started digging into the details and the actual  
13 underwriting documents done by the banks who put the  
14 mortgages in there. It turns out that a lot of  
15 mortgages actually were not as they said they were,  
16 and had many significant credit problems in there  
17 that were not disclosed to the investors. And had  
18 they known those, they may or may not have invested  
19 or they may -- may or may not have invested at that  
20 price. So that's the crux of the lawsuit.

21 And so my work involved explaining what  
22 the prospectus detailed and how important it is to an  
23 investor since I served as -- in that role for many  
24 years.

25 And then, also, because I'm very

1 familiar with that space, pointing out what parts of  
2 the prospectus were inaccurate and how to identify  
3 what was wrong with the loans and looking at the  
4 results of the -- the diligence and factfinding on  
5 those loans, and pointing out the errors, and put  
6 that together in a report, and maybe that's what led  
7 to the settlement. I don't -- I don't know.

8 Q. And did you provide a similar report in  
9 the other matter? I think you said there are two  
10 10b-5 cases?

11 A. They followed the same line, different  
12 banks, different procedures that each bank used.  
13 Different types of loans, but followed the same sort  
14 of fact finding. It just had somewhat different  
15 results, but...

16 Q. You mentioned that part of the work that  
17 you did was looking at the prospectus in -- in both  
18 cases. Why did -- or -- or why is information  
19 contained in a prospectus important to investors?

20 A. Why is -- I don't know why it's  
21 important to all investors. I can only speak to why  
22 it would be important to me as an investor. And, for  
23 instance, in -- and I'll speak unless you want  
24 otherwise, I'll speak to residential mortgage-backed  
25 securities because that's the topic at hand.

1                   If you didn't have a prospectus, there  
2     would be nothing to, you know, if I'm going to put  
3     out money or invest -- invest in something, it's --  
4     it's what a common person would want to see, you  
5     know, what -- what's behind the curtain, what are you  
6     really buying.

7                   I think with a -- maybe a good example  
8     for the layman would be a mutual fund. So if you're  
9     going to invest in a mutual fund, there are the  
10    marketing materials which can give you some  
11    information. But if you ultimately want to know what  
12    the mutual fund holds, you have to read the  
13    prospectus, and you actually see a more detailed  
14    listing of all the holdings and actually calculations  
15    of returns, and you see all the kind of detail.

16                  You can see who acts as the  
17    administrator, what kind of fees are involved. In  
18    the fixed income world like the R -- the residential  
19    mortgage-backed securities, we -- there aren't any  
20    marketing materials essentially, so you would have  
21    nothing to base your investment on. There is --  
22    without some sort of documentation to flip through,  
23    so the prospectus is -- contains a lot of information  
24    to the tune of several hundred pages of -- of legal  
25    information and actual details in these deals.

1           Q.       Well, in your experience in the fixed  
2   income markets, and I'm going to ask you some more  
3   questions about that, but would you typically review  
4   the written prospectus before deciding to make an  
5   investment in a particular product?

6           A.       The easy answer is yes, I would say  
7   that, you know, I said there is several hundred  
8   pages, so -- and there are also things called  
9   prospectus supplements. So a lot of times I call it  
10   a boilerplate, but a certain issuer may have a  
11   standardized prospectus for certain types of bonds  
12   that they are issuing that doesn't have the actual  
13   details of the -- for an asset-backed security it  
14   doesn't have the details of the asset-backed pool, it  
15   would come in a separate thing called prospectus  
16   supplement that gives you all that detail.

17                   So after having some comfort with the  
18   standard form of the prospectus, and as far as risks  
19   of investments and general details about their prior  
20   performance and things like that, a lot of reliance  
21   was placed on the actual assets involved because  
22   ultimately that's what, you know, was backing the  
23   investment.

24                   So, yes, we had a -- I had a method for  
25   every time to look at or have some understanding of a

1 prospectus.

2 Q. In your experience, would you ever  
3 purchase a security without -- in the fixed income  
4 market without first taking a look at a prospectus?

5 A. Well, I just want to -- I would say no,  
6 except I'm trying to remember. I've done Reg D,  
7 private placement investments. I don't know if they  
8 call them -- and they come with documents and it's  
9 not a prospectus, I think, because it's not a -- I  
10 don't think they are legally obligated to produce  
11 one.

12 I mean, you -- we collect a lot of same  
13 information, but I don't know that it was called a  
14 prospectus. I would have to go look up some of those  
15 to see what it was really called, but definitely  
16 doing a lot of due diligence that has either --  
17 either is in a prospectus or something that's very  
18 similar or you would ask the same questions to get  
19 the same type of information out.

20 Q. Let's say it's a Reg D investment or  
21 some other type of investment where there is no  
22 prospectus, but there are written materials  
23 associated with that security. You'd want to take a  
24 look at those materials.

25 A. That would be your only, and, yes, you



1 would want to save them, because if something goes  
2 wrong, that would be your only -- your only recourse  
3 to go back and -- and plead your case. And whether  
4 or not that would be, you know, whether or not that  
5 would save the day, I think that's one reason why  
6 when you operate in the public markets where it is  
7 all highly regulated, you do have certain recourses  
8 that are dictated by the law.

9 And I'm not sure you get all those when  
10 you start venturing into private placements and stuff  
11 like that.

12 Q. And in the two cases that we have been  
13 talking about the 10b-5 actions, was the issue that  
14 there was an alleged misrepresentation in the  
15 prospectus documents?

16 A. Correct. Well, misrepresentation, and  
17 then scienter, so whether or not it was an accident  
18 or they knowingly -- that was the crux. I think in  
19 order to succeed, you have to prove that it was done  
20 as a case of fraud, so it was knowingly  
21 misrepresented.

22 Q. Have you before this matter ever  
23 provided expert testimony or an expert report or  
24 expert consulting in connection with an insurance  
25 coverage dispute?

1 Q. And did you agree to the engagement in  
2 July or August or did you agree at some point in time  
3 later?

4 MR. LEE: Objection; form.

5 A. I have to go look at the engagement  
6 letter date.

7 Q. You're not providing any opinions in  
8 your report on the actual meaning of the language in  
9 the insurance policy, are you?

10 A. No. I was asked to -- for -- what the  
11 terms meant and, kind of, common parlance with --  
12 within the investment community. So, meaning, you  
13 know, we talked earlier about the investment  
14 industry -- people are participating in the  
15 investment industry; so for people who work in that  
16 universe, what do these words mean.

17 Q. Well, you didn't play any part in the  
18 actual underwriting of the insurance policy at issue  
19 here, did you?

20 A. No, I did not.

21 Q. Were you asked to give any opinions on  
22 issues other than those listed in your report?

23 A. No, I was not.

24 Q. And did you decline to give any opinions  
25 that you were asked to give?

1 finance-oriented, but they have all sorts.

2 Q. Does it engage in any type of consulting  
3 other than providing consulting in support of  
4 litigation?

5 A. Yes.

6 Q. What types of consulting?

7 A. Could be -- you know, once again, I'm  
8 not involved in all other aspects of the firm, but I  
9 mean, just -- as I described earlier, we did that  
10 work in the Peregrine matter where you're working --  
11 it's not litigation. It's sort of -- you know, could  
12 be consulting on practices or review or as a result  
13 of maybe a litigation or regulatory action where  
14 someone's asked to come in as a third party and do,  
15 you know, advisory-type work or oversight work. We  
16 would do any of those types of things.

17 I -- we -- we've -- you know, I've  
18 personally attempted to do some things around rogue  
19 trading, which was not going to be tied to litigation  
20 or whatnot.

21 Q. How much of your work relates to  
22 providing services as an expert for litigation versus  
23 work as a consultant?

24 A. It ebbs and flows, I would say. But  
25 right now it's predominantly litigation-focused

1 mostly because my expertise falls within the realm of  
2 a lot of things that are being litigated currently  
3 like the mortgaged-backed securities that we spoke  
4 of, so.

5 Q. Has that been true for the last several  
6 years?

7 A. When I started at Mesirow, I actually  
8 ended up doing a fair amount of bankruptcy-type work,  
9 which is in the courts, but it's not necessarily  
10 litigation. And then it's evolved as -- from the  
11 crisis the lawsuits have come to bear, and so it's  
12 been more litigation recently.

13 Q. So would you say more than two-thirds of  
14 your time?

15 A. Yes.

16 Q. Not a hundred percent?

17 A. No.

18 Q. Somewhere between?

19 A. Correct.

20 Q. Does Berkeley Research Group engage in  
21 any sort of trading activity in the securities or  
22 commodities markets?

23 A. No.

24 Q. Now, back to paragraph 3 of your report,  
25 you mentioned that other Berkeley Research Group

1           Q.       Okay. Well, what's King Street Capital  
2       or what was King Street Capital at the time that you  
3       worked there?

4           A.       It is and was a preeminent distressed  
5       hedge fund.

6           Q.       What is a preeminent distressed hedge  
7       fund?

8           A.       It's a hedge fund that attempts to use  
9       their expertise to make money in distressed  
10      securities market -- distressed asset market. I  
11      should widen it.

12          Q.       Has that always been their business?

13          A.       Yes.

14          Q.       What were your duties as a trader at  
15      King Street Capital?

16          A.       I -- because of my background, they did  
17      not have anyone that was an expert in asset-backed or  
18      mortgaged-backed securities and the nuances that came  
19      with the consumer credit profile. So I was looking  
20      for a place to -- to use the knowledge that I had  
21      gathered at GE Asset Management to use that  
22      background.

23          Q.       Well, how did you use that background?

24          A.       I managed a portfolio of securities in  
25      the -- or in derivatives in the mortgaged-backed --

1 commercial mortgaged-backed space.

2 Q. Were there other traders at King Street  
3 Capital who did the same type of work?

4 A. No. I was one of six, but the only one  
5 in that space.

6 Q. Did you run a team at King Street  
7 Capital?

8 A. Not an official team. I had folks that  
9 I worked with.

10 Q. Anyone reporting to you?

11 A. That's not -- that's not the way we were  
12 structured, no.

13 Q. Okay. How -- how were you structured?

14 A. Pretty much everyone reported to the two  
15 founders of the firm.

16 Q. And who were the two founders of the  
17 firm?

18 A. Brian Higgins and Fran Biondi.

19 Q. How many people worked at King Street  
20 Capital when you were there?

21 A. When I started it was probably like  
22 50 -- somewhere between 50 and 60.

23 Q. Are you familiar with the term  
24 "sell-side firm"?

25 A. Yes, I am.

1 Q. When you worked at King Street, was it  
2 considered a sell-side firm?

3 A. No. They've always -- they're a  
4 buy-side firm.

5 Q. What's a buy-side firm?

6 A. Buy-side firms are -- they would be  
7 investors, predominantly. If I was trying to explain  
8 it to somebody at a cocktail party, generally the  
9 buy-side are the folks that are investing, and  
10 sell-side the folks that are, you know, providing  
11 the -- selling the securities to be invested.

12 Q. When you were at King Street Capital,  
13 was King Street Capital considered to be a broker?

14 A. No, they're not a broker.

15 Q. Why not?

16 A. Because they don't -- they're not  
17 licensed to be a broker. They're purely a -- they're  
18 a hedge fund; they're a private investment company.

19 Q. Have you ever worked at a sell-side  
20 firm?

21 A. I -- not directly. I may -- GE may have  
22 had a broker-dealer. But no, me personally it's  
23 always been buy-side.

24 Q. Have you ever worked for a firm that was  
25 considered a broker?

1           A.       Like I said, actually at GE and at  
2   Mesirow. Mesirow, the parent company, it has a  
3   broker-dealer, but I -- there was a wall. I mean,  
4   I -- I didn't work for that part of the institution,  
5   no.

6           Q.       Okay. Why did you leave King Street  
7   Capital?

8           A.       They -- it's a mutual agreement. They  
9   are no longer doing things in the residential  
10   mortgage-backed -- asset-backed space. In other  
11   words, the time came and went for that investment  
12   strategy.

13          Q.       To your knowledge is King Street Capital  
14   still engaged in that business?

15          A.       Not -- they're engaged as a hedge fund,  
16   but they're not in the -- to my knowledge in the  
17   mortgaged-backed sector anymore.

18          Q.       Do they still own mortgaged-backed  
19   securities for their proprietary accounts to your  
20   knowledge?

21                   MR. LEE: Objection; speculation.

22          A.       Yeah, I don't -- I don't know, and I  
23   would doubt it.

24          Q.       When you were at King Street Capital,  
25   was it King Street's practice to hold



1 the difference would be in -- a PreTSL is the assets  
2 that we're speaking of are preferred -- preferred  
3 stock and generally in banks.

4 So before I think we talked about, I had  
5 explained auto loans or something like that, but I  
6 mean, mortgages. In this case, it's preferred stock  
7 from banks. And then it's carved up to a -- it's a  
8 CDO, but that would be the SPV that we talked about  
9 earlier.

10 Q. When you were at King Street Capital,  
11 did King Street Capital invest in PreTSLs?

12 A. No, not -- I didn't, and I don't -- I  
13 don't think they had, anybody else had some of those.

14 Q. Do you know what a trust preferred  
15 product is?

16 A. A trust, yes.

17 Q. Is that the same thing as a PreTSL or is  
18 it something different?

19 A. No. Trust preferred by itself is -- is  
20 either stock or debt that's issued by a -- it could  
21 be offered by many different companies. That's part  
22 of what goes into a PreTSL.

23 Q. Did you, while at King Street Capital,  
24 invest in any trust preferred products?

25 A. I didn't.

1 Q. Do you know if anyone else at King  
2 Street did?

3 A. No, I don't.

4 Q. Now, on page 2 of your CV, near the  
5 bottom of the page, you talk about some of the work  
6 you did at King Street Capital. And it's the  
7 paragraph at the bottom of page 2 of Appendix A,  
8 prior to working as a consultant, and then your first  
9 bullet you say that you initiated the MBS, ABS, CMBS  
10 strategy for this \$9 billion hedge fund.

11 Could you define the term "hedge fund"  
12 as you understand it?

13 A. Private investment company.

14 Q. Anything else?

15 A. No. I mean, hedge funds are -- that's  
16 just a -- they are generally -- they are -- they are  
17 investment vehicles for people, either institutions  
18 or other qualified people. There are certain, you  
19 know, certain rules that they have to abide by to  
20 be -- not registered under the '40 Act, whereas at GE  
21 most of our stuff was underneath the '40 Act.

22 So to do certain types of investments  
23 and riskier types of things it's -- you know, it  
24 benefits you not to be regulated by the '40 Act.

25 Q. What's the '40 Act that you're referring

1 portfolio manager. I got to trade and be a portfolio  
2 manager.

3 Q. Is a trader a transactor?

4 A. Ultimately, right, you're buying and  
5 selling.

6 Q. And paragraph 8 of your report, we'll  
7 turn back to that, we may jump back to your CV, but I  
8 want to ask you about that paragraph in particular,  
9 you state that while you were a portfolio manager for  
10 GE Capital and GE Asset Management you analyzed,  
11 invested and traded many different varieties of CDOs,  
12 including trust preferred CDs and, in particular,  
13 PreTSLs.

14 A. Correct.

15 Q. What's a CDO?

16 A. It's a collateralized debt obligation.

17 Q. And is a PreTSL a type of collateralized  
18 debt obligation?

19 A. They are.

20 Q. And what trust preferred products did  
21 you invest in or did GE invest in while you were at  
22 GE?

23 A. I -- I inherited, one of our clients had  
24 a portfolio that had Alescos, for sure. And that's  
25 the only one I can remember off the top of my head as

1 being, you know, like I said, I didn't -- I had it  
2 and so I had to maintain it and get rid of it or  
3 monitor it and understand it.

4 And I analyzed PreTSLs and tabernas,  
5 meaning that they were shown to me and primary and  
6 secondaries, and so I'm very familiar with everything  
7 about them.

8 Q. Well, did you ever actually invest in  
9 any trust preferred products or PreTSL products  
10 yourself when you were at GE?

11 MR. LEE: Objection; form.

12 Q. When I say yourself, I mean on behalf of  
13 GE.

14 A. No, I did not. I did not make  
15 additional purchases of trust preferred vehicles  
16 while in the seat. I had to -- I said I had  
17 inherited positions that I had to -- I end up did  
18 trading with -- I almost considered them somewhat  
19 distressed or impaired, whatever, it was just legacy  
20 positions.

21 Q. So you didn't invest in trust preferreds  
22 other than the portfolio that you inherited.

23 Is it also correct that you did not  
24 invest in PreTSLs on behalf of GE?

25 A. No, we declined, declined the

1 investment.

2 Q. What was the approximate volume of  
3 the -- of the -- or value of the trust preferred  
4 portfolio that you inherited?

5 A. I don't know the exact number. I would  
6 say in excess of \$10 million.

7 Q. 10 million?

8 A. I mean, like I said, it was -- it was a  
9 client, so they are a subaccount. Because of the  
10 size of the subaccount, it would probably have to be  
11 in excess of 10 million, but that's -- it was a while  
12 ago.

13 Q. Were there multiple products in that  
14 portfolio? Or was it just one note?

15 A. The -- their whole portfolio or...

16 Q. The trust preferred portfolio that  
17 you're describing.

18 A. There were multiple line items.

19 Q. Were any of the trust preferred products  
20 in that portfolio, to your knowledge, issued by FTN?

21 A. A long time ago. I don't know. I would  
22 doubt it because to my knowledge they were pretty  
23 much PreTSL. I think that may have been their only  
24 preeminent product.

25 Q. So you don't know?

1     that's what the byte size would be.

2             Q.       When you were at GE, were you primarily  
3     on the buy-side like you were at King Street or were  
4     you primarily on the sell-side?

5             A.       We -- where GE Asset Management and  
6     before that at GE Capital, it was always the buy-side  
7     operation. If they had -- I'm not positive that GE  
8     Capital had a brokerage, but probably did somewhere  
9     within the company. It would be walled off from us,  
10    so.

11            Q.       Do you recall any of the individuals who  
12    were involved in the transactions where GE sold trust  
13    preferred products in 2002 to 2006?

14            A.       No. I would just be speculating if I  
15    was trying to figure out who bought them. They would  
16    probably have been off of a list when it was done.

17            Q.       When you were at GE did you have any  
18    involvement in purchasing professional liability or  
19    directors and officers insurance for GE?

20            A.       No.

21            Q.       It's a different department, wasn't it?

22            A.       I imagine.

23            Q.       I would like you to look at paragraph 4  
24    of your report, and you'll see that in paragraph 4  
25    you list some of the types of consulting and

1 and what they did with the customers' assets and was  
2 their co-mingling -- it wasn't fraudulent conveyance  
3 per se, but it was sort of the same aspects. So  
4 tracing the path of the monies and what -- were  
5 things handled correctly and was there any sort of  
6 malfeasance and what happened in the bankruptcy.

7 Q. And is that the type of work that you  
8 were doing in connection with Sentinel bankruptcy as  
9 well?

10 A. I was employed, once again, because it  
11 was a financial institution, Sentinel being the  
12 financial institution, and as the one at Mesirow, the  
13 expert in all financial instruments just because no  
14 one else there has any -- any securities background,  
15 so everything with securities kind of fell under my  
16 purview. So helping them understand the portfolios,  
17 the repos, the accounts, the trading, the trade logs,  
18 that's my role.

19 Q. During what time period were you engaged  
20 to work on the Sentinel bankruptcy matter?

21 A. It was soon after I started. So I  
22 started in 2008. It may have been -- it's either the  
23 summer of 2008 or summer of 2009. I don't know exact  
24 year, but it was one of those summers and I don't  
25 know if it was right away or a year into it, but...

1 actual drafting of the Feltman report?

2 A. Yes. But it's his content, so...

3 Q. But you as an employee of Mesirow, you  
4 would want the report to be accurate. Correct?

5 A. Yes.

6 Q. Now, in forming your opinions in this  
7 matter, are you relying in any way on information  
8 that you obtained in connection with the work you  
9 performed for the trustee in the Sentinel bankruptcy?

10 A. No.

11 Q. I would like you to turn to page 7 of  
12 your report -- I'm sorry, paragraph 7 on page 4. In  
13 paragraph 7 you state that you were involved for  
14 nearly 15 years in investing predominantly as a  
15 portfolio manager and trader for a variety of  
16 institutional and accredited investors.

17 I just want to make sure I understand  
18 the terms you're using. What is an institutional  
19 investor?

20 A. An institutional investor is a QIB, is  
21 what we use in the parlance, which I think is a  
22 Qualified Institutional Buyer. It's a form you have  
23 to fill out and you have to meet certain requirements  
24 to qualify as one.

25 And I -- honestly, I don't even know



1 CFA.

2 Q. Okay.

3 A. And so your question was does being a  
4 CFA charter holder allow me --

5 Q. Qualify you to serve as a securities  
6 broker or dealer?

7 A. No, it does not.

8 Q. Now, you mentioned earlier the Series 7.  
9 What's the -- what's a Series 7?

10 A. It's a FINRA license and it's --  
11 it's what a -- you know, it's a general securities  
12 registered representative license. So it's -- I'm  
13 not sure I would call it a broad license for folks on  
14 the -- predominantly sell -- sell-side sort of  
15 license. Most of them are required to have that if  
16 they want to operate. And then there are other  
17 licenses they may be -- have to hold on top of that.  
18 But that's the reason I took it was because if I was  
19 going to work for a broker-dealer, which could be a  
20 sell-side sort of entity and it's regulated a certain  
21 way and you have to hold those licenses.

22 Q. So it's a license to trade as a  
23 securities broker-dealer? What's it a license to do?

24 A. I don't know.

25 Q. Okay.

1           A.       I just know that most broker-dealer  
2   folks who work for broker-dealers are going to have  
3   that, and probably more on top of it, 63, 65, et  
4   cetera.

5           Q.       You have to take a test to get a Series  
6   7?

7           A.       Yes, I did.

8           Q.       Has your Series 7 lapsed?

9           A.       Not yet, because I left Mesirow in --  
10   it's two -- it stays live for two years with Mesirow,  
11   and then it will lapse.

12          Q.       When did you get your Series 7?

13          A.       Right before I left Mesirow, so 2012.

14          Q.       Did you ever have a Series 7 license  
15   before you were at Mesirow?

16          A.       Nope.

17          Q.       Why did you get a Series 7 license at  
18   Mesirow?

19          A.       Because I was the -- like I said, I was  
20   the only -- on for Mesirow Financial Consulting, I  
21   was the securities expert, and they wanted to  
22   establish a broker-dealer to potentially assist in  
23   restructurings and that involved either selling or  
24   securities or whatnot, and so it made the most sense  
25   for the person with the most experience in that space

1 to be one of the people that held the licence.

2 Q. And I think you said earlier that  
3 Mesirow did not trade in securities. Did you ever  
4 use your license to buy or sell securities?

5 A. No, we never -- I don't think they still  
6 haven't -- it's been kind of dormant, but, you know,  
7 they set it up.

8 Q. And you never managed a trading book at  
9 a broker-dealer, have you?

10 A. No.

11 Q. Do you consider yourself a securities  
12 broker or dealer?

13 A. No.

14 Q. Why not?

15 A. Because the securities broker-dealer's  
16 involved in brokering or dealing in securities and I  
17 have always been an investor.

18 Q. Is it fair to say that you've never  
19 acted in your capacity as a registered rep or a  
20 broker-dealer?

21 A. Correct.

22 Q. Now, is a company stock that trades on a  
23 national exchange like the New York Stock Exchange,  
24 is that a security or is it a commodity?

25 A. So you -- you said does a company stock,

1           A.       No. These are -- yeah, she just missed  
2     the -- the correct terminology in the title.

3           Q.       Well, I think you cite some statutes in  
4     the documents considered. Does this list of  
5     documents list all of the statutes you considered in  
6     preparing your report?

7           A.       Yes. Mostly, they were in reference.  
8     Once again, I said the -- the other experts,  
9     certainly the Investment Company Act we spoke of,  
10    that came up, and, you know, Mr. Atkins -- some of  
11    the other references were either from FINRA or SEC  
12    type, so I'd have to go see the context of where  
13    those definitions were coming out of to go review.

14          Q.       Are statutes relevant in any way to your  
15    opinions?

16          A.       No, because I'm taking the -- I was  
17    asked sort of what the broad industry sort of  
18    understanding is, and the other side chose not to  
19    take that path, but from my perspective, I was sort  
20    of broader, but I still needed to understand what  
21    they were talking about.

22          Q.       Is it fair to say -- and we'll get into  
23    your specific opinions in a minute, but, generally,  
24    with respect to the issues or terms that you were  
25    asked to opine on, your understanding of those terms

1 THE VIDEOGRAPHER: Back on. 2:01.

2 MR. GUILBERT: Okay. We just went off  
3 the record, and counsel for the insurers represents  
4 that a copy of this memorandum that we just discussed  
5 was produced by First Horizon and will get us the --  
6 the Bates number reference at the next break.

7 BY MR. GUILBERT:

8 Q. Let's turn back to your report,  
9 Mr. Vahey, to section 4, which starts on page 4, and  
10 then I would like to ask you some just general  
11 questions about paragraphs 13 through 16. And you  
12 summarize the primary opinions that you're giving in  
13 this case. Do you see that?

14 A. Yes.

15 Q. Are these the only opinions that you're  
16 offering in this case?

17 A. Yes.

18 Q. And just to make sure I've got it right,  
19 the three opinions are generally that FTN was a  
20 market maker as the term is commonly understood for  
21 PreTSL securities?

22 A. Yes.

23 Q. The second opinion is that Sentinel was  
24 a company engaged in investing in securities on  
25 behalf of others for a fee and, therefore, it is an

1 investment company as the term is commonly  
2 understood?

3 A. Yes.

4 Q. And the third is that Sentinel was a  
5 commodities broker-dealer?

6 A. Correct.

7 Q. Does a commodities broker-dealer invest  
8 in securities on behalf of others for a fee?

9 A. They could.

10 Q. So --

11 A. So, in other words, an FCM could be an  
12 investment company, as --

13 Q. Are all --

14 A. -- as could a broker-dealer, so --

15 Q. So a securities broker-dealer invests in  
16 securities on behalf of others for a fee, doesn't it?

17 A. No, not always, so that's why I'm saying  
18 it could.

19 Q. It could?

20 A. The same thing, an FCM could, but not  
21 all of them did, so the avenue is certainly  
22 available.

23 Q. When would a securities broker-dealer  
24 not invest in securities on behalf of others for a  
25 fee?

1           A.       Many do not.

2           Q.       Can you give me some examples?

3           A.       Because -- certainly many of the smaller  
4 regional broker-dealers, their bread and butter is  
5 really matching up buyers and sellers and they don't  
6 have a lot of balance sheet, and that's what they --  
7 they earn the spread, the bid-ask, and maybe other,  
8 like servicing -- service-type fees. Maybe they  
9 might do some custodial or clearing work.

10                   But to invest on behalf of others,  
11 they -- certainly there are some broker-dealers that  
12 set up investment arms or have some people under  
13 their umbrella, but that broker-dealer's primary  
14 responsibility -- or their primary job is being a  
15 broker or a dealer, not necessarily being an  
16 invest -- you know, investing, but they can, and this  
17 broker rule may -- certainly may change how that's  
18 done and whatnot, so...

19           Q.       Do insurance companies invest in  
20 securities on behalf of others for a fee?

21                   MR. LEE: Objection; speculation.

22           A.       Yeah. Well, I mean, in general terms,  
23 they are investing other people's money that was put  
24 towards policies. So, I mean, that's other people's  
25 money and they certainly do charge. It's called cost

1 institutional spaces, you know, big investors, so,  
2 they are a type of investment company.

3 Q. If a broker-dealer invested in  
4 securities on behalf of others for a fee, would it be  
5 an investment company under your definition?

6 A. Oh, yes, yeah, um-hmm.

7 Q. I would like to look at paragraph 14 of  
8 your report, you state that making a market, in  
9 quotations, is a common and widely used term in the  
10 financial services industry. How are you defining  
11 the financial services industry for the purposes of  
12 that paragraph?

13 A. I believe the net can be cast widely as  
14 we spoke earlier, I mean, of folks that are -- it  
15 probably helps to be closer as far as to someone  
16 understanding it, the folks that are closer to actual  
17 trading operations, but anyone connected to, you  
18 know, any part of the trading of securities, I think,  
19 can opine on -- on that. And I don't know if back  
20 office people necessarily would know that, but,  
21 certainly, what we call front and middle office  
22 people would have familiarity with that sort of  
23 market activities.

24 Q. Would someone who is closer to actual  
25 trading operations as you use that -- that phrase,



1 have a better understanding as to what making a  
2 market means than someone who is farther away from  
3 actual trading operations?

4 MR. LEE: Objection; calls for  
5 speculation.

6 A. I mean, generally one would hope.

7 Q. Is there anyone that -- you cast the net  
8 widely I think with respect to financial services  
9 industry. Is there anyone that you might think of in  
10 the financial services industry who is out of that  
11 net that's not part of the financial services  
12 industry?

13 MR. LEE: Objection to form; unclear.

14 A. Could you rephrase that maybe?

15 Q. Yeah. I'm just trying to figure out who  
16 is in the net when you referred to the financial  
17 services industry and who is out, if anyone.

18 MR. CONRAD: Objection to form.

19 A. Yeah, I mean, I can't -- I mean, it's --  
20 it's all going to be dependent upon a person's  
21 experience and how involved they are with  
22 understanding their job and surrounding environment,  
23 you know, I mean, need to know, want to know.

24 Q. Well, is somebody who works for a  
25 pension plan part of the financial services industry

1 as you define?

2 A. Once again, based on experience, I know  
3 people who are extremely disinterested in that role  
4 and others that are extremely capable and  
5 knowledgeable in that role. So, I mean, ideally, you  
6 would want people to know what things like that mean.  
7 It's just dependent on the people involved.

8 Q. Let's say someone who runs a pension  
9 fund, for an example, would that individual be part  
10 of the financial services industry as you define it?

11 A. When you say -- pension funds can be  
12 kind of convoluted structures, meaning it can be  
13 somebody who has outsourced everything to other  
14 people or it can be a person who actually trades on  
15 behalf of a pension fund. So in the latter instance,  
16 probably a very, you know, decently knowledgeable person;  
17 in the first part, probably not so much because  
18 they've delegated everything.

19 Q. Is a payday lender part of the financial  
20 services industry, someone who runs a payday lending  
21 operation?

22 MR. CONRAD: Objection to form.

23 A. They are in financial services; they are  
24 a lender.

25 Q. Well, would a payday lender have any

1 understanding as to what it means to make a market in  
2 securities?

3 MR. CONRAD: Objection to form. Calls  
4 for speculation.

5 MR. LEE: Objection.

6 A. I don't know, but, but there is a good  
7 chance they would.

8 Q. What about someone who works for an auto  
9 finance corporation whose job is to work on issuing  
10 credit and car loans to consumers, are they part of  
11 the financial services industry as you define it?

12 A. They are a lender, so they are -- they  
13 are probably some of the foundation of the securities  
14 I dealt with.

15 Q. And would someone working for a lender  
16 who specializes in automobile consumer finance be  
17 qualified to or even know what making a market means?

18 MR. CONRAD: Objection to form; calls  
19 for speculation.

20 A. Yeah, I don't know.

21 Q. I would like to look at paragraph 18 of  
22 your report. You state, "It is my understanding that  
23 common industry terms such as 'market maker,'  
24 'broker-dealer' and 'securities' or 'commodities' and  
25 'investment company' were not defined elsewhere in

1 the insurance policies." Is that right?

2 A. Yes, that's what I wrote, yeah.

3 Q. What do you mean by "common industry  
4 terms"?

5 A. Meaning that, you know, market-maker  
6 investment company that had -- that term gets used a  
7 lot in our industry just in common nomenclature, same  
8 thing of broker-dealer. It wouldn't be in securities  
9 or bonds, but broker-dealer is certainly another  
10 common phrase.

11 Q. So the fact that a term is used a lot  
12 makes it a common industry term?

13 A. Yes.

14 Q. Used a lot by whom?

15 A. Those of us that are in the industry.

16 Q. The last sentence of paragraph 18, you  
17 talk about your opinion that FTN functioned as a  
18 market maker and that Sentinel is an investment  
19 company and a broker-dealer in commodities as the  
20 respective terms are generally understood, and,  
21 again, I just want to make sure I'm clear on this.  
22 Generally understood by whom?

23 A. You said, you know, common parlance in  
24 the general industry, so folks in the space. So in  
25 the -- in the -- in the environment, which I'm

1 familiar with the institutional environment or, you  
2 know, investment community, that's what I meant by  
3 understood by the participants in that market.

4 Q. We spoke this morning a bit about some  
5 of the regulatory authorities that are involved in  
6 the financial services industry. Wouldn't you agree  
7 that the financial services industry in the United  
8 States is heavily regulated?

9 MR. LEE: Objection; form.

10 A. Heavily is an adjective that -- it's  
11 definitely regulated.

12 Q. So you would agree the financial  
13 services industry is regulated?

14 A. Oh, yes.

15 Q. By lots of regulatory agencies?

16 MR. LEE: Objection to form.

17 A. I believe there are a lot -- there are  
18 several industries that perform some sort of  
19 regulatory duty in the United States, yes.

20 Q. Do regulatory definitions, definitions  
21 of terms promulgated by regulators, impact in any way  
22 the way common industry terms, as you refer to them,  
23 are understood?

24 MR. LEE: Objection; form, speculation,  
25 incomplete hypothetical.

1 Atkins both referred to market making definitions  
2 that were either from FINRA or from SEC side of the  
3 house, it certainly showed that they -- they were  
4 putting it, you know, they were using that foundation  
5 for their -- their reports.

6 So, yes, I mean, I considered that when  
7 I was, you know, making -- crafting my response  
8 because I view it -- I was asked -- what I was asked  
9 to do was to look at it in a broader -- broad  
10 context. But when I saw the other side, they were  
11 not, as I understand it, reviewing it in a broad  
12 context, so...

13 Q. Now, elsewhere in your report you refer  
14 to how terms are used in, quote/unquote, common  
15 parlance. What do you mean by "common parlance"?

16 A. Generally, like I said, just  
17 communications within the industry, outside of, like  
18 I said if there is, you know, it was all in context  
19 so -- but in the day-to-day sort of operations where  
20 you're not, you know, sitting down with a regulator  
21 or sitting down to discuss compliance with  
22 regulations, just how the people talk about  
23 investment company, and certainly market making, I  
24 actually don't -- in my -- my experience, fixed  
25 income side, very rarely speak about the regulated

1 version of market making.

2 It's not a -- it just doesn't happen.

3 Q. Do you think that you were ever a market  
4 maker in the fixed income products that we discussed  
5 earlier this morning when you were at King Street  
6 Capital?

7 A. We could have been, but I did not -- it  
8 wasn't something that we endeavored to do. Certainly  
9 had inventory and all the traders had the ability to,  
10 you know, put bid-ask out. But, I mean, we don't  
11 have buy-side firms with, you know, to send out our,  
12 you know, the parties, you know, putting those quotes  
13 out to a broad set of participants is sort of, I  
14 think why buy-side firms don't do more of that,  
15 although I -- certainly there is nothing -- and then  
16 I don't know if they would start running afoul of  
17 compliance, regulatory compliance rules. But, no, we  
18 didn't.

19 Q. Well, if you're at a cocktail party back  
20 in 2007 at King Street Capital and someone asked you  
21 if you were a market maker, what would you say?

22 A. No.

23 Q. Why not?

24 A. Because I'm an investor.

25 Q. Any other reasons?

1           A.       No.   That -- because I'm an -- that's  
2   what -- I mean, I'm a trader, portfolio manager,  
3   investor.   That's what we do as a firm.   I don't  
4   think it would be wise for us to hold ourselves out  
5   as anything else.

6           Q.       Well, why does how you hold yourself out  
7   matter with respect to whether you're a market maker  
8   or not?

9           A.       Generally, when there is, you know,  
10   potential for -- there are laws involved and it's not  
11   my -- I mean, I know what I do at King Street and I  
12   certainly wouldn't step outside my box to claim to be  
13   doing something that I don't, so I was an investor.

14          Q.       So the laws do have consequences when  
15   you use certain terms in the industry, don't they?

16                   MR. CONRAD:   Objection to form.

17          A.       Many do, and you certainly don't want  
18   to -- in that hypothetical you gave me, it would be  
19   foolhardy to, like I said, to claim something that I  
20   wasn't doing, so...

21          Q.       Paragraph 19, you state that, let me see  
22   if I got this right, that PreTSLs are a type of CDO,  
23   and we talked about what CDOs were earlier.   And then  
24   in the second sentence you say, "The CDOS then issue  
25   bonds."



1                   And then they may or may not have made  
2     money in making a market. It was almost on the  
3     bid-ask, certainly putting things in and out, and  
4     that's what I've said a market maker does.

5           Q.       How does a market maker make money from  
6     market making activities?

7           A.       So, in theory, I mean, you're supposed  
8     to buy high and, you know -- or sell high and buy  
9     low. But you're also -- you're facilitating that  
10    market, and so you -- if the market sort of moves the  
11    way they are anticipating, then they'll make that,  
12    you know, bid-ask spread. But, you know, part of the  
13    other thing, you're not necessarily guaranteed to  
14    make a profit as a market maker.

15                   So that's why they take risks. So, it  
16    doesn't always work out the way they want to.

17                   So in the market making and, for  
18    example, so you look at FTN, they made a ton of money  
19    in the new issue side. It wasn't the market making  
20    that was their profit center.

21           Q.       So do you think FTN made any money from  
22    market making activities?

23                   MR. LEE: Objection; calls for  
24    speculation.

25           A.       Yeah, I would have to go look at the

1 records.

2 Q. What would you have to look at?

3 A. I would look at their P&L on Jankowski's  
4 trading logs. You can see where they bought stuff  
5 and sold it. They tracked it. You can get that  
6 information.

7 Q. Did you ask for it?

8 A. No, because I didn't care whether or not  
9 they -- whether they made a profit. That wasn't part  
10 of my opinion.

11 Q. If FTN didn't earn revenues for market  
12 making activities, would that impact your opinion one  
13 way or the other?

14 MR. CONRAD: Objection to form.

15 MR. LEE: Objection; calls for  
16 speculation; incomplete hypothetical.

17 A. No, because that's not part of the  
18 definition of market making.

19 Q. Do you know what a mark-up is?

20 A. Yes.

21 Q. What's a mark-up?

22 A. It is the ability of the sell side to,  
23 if they own a piece of -- a security, they can then  
24 just automatically before they reoffer it, they can  
25 move the price up to a certain amount. And there is

1 of foundation.

2 A. There are buy-and-hold investors, yes.

3 Q. And were there buy-and-hold investors in  
4 the structured finance markets in which you operated  
5 when you were at King Street Capital and GE?

6 A. There are buy-and-hold investors  
7 scattered all throughout the world. And I cited the  
8 Bond Market Association, which I think he talks  
9 about, the head of that talks about there would be a  
10 certain, yeah, certain investors and fixed income are  
11 buy-and-hold, um-hmm.

12 Q. Who is that you're referring to?

13 A. Micah Green.

14 Q. Who is Micah Green?

15 A. He's the president of the Bond Market  
16 Association back, for a very long time, certainly in  
17 2004 when he was quoted, and before that he was --  
18 he's been active in Washington, D.C. for a long time.

19 Q. Would you agree with me that he's a  
20 lobbyist?

21 MR. LEE: Objection; form; foundation;  
22 speculation.

23 A. Yeah, I'm not -- I do know that the Bond  
24 Market Association, even one of the reasons it was  
25 used here is because the -- the breadth of people who

1 are members is significant, and they hold industry  
2 events, not unlike the CFA industry we talked about,  
3 and its many buy-side participants are there.

4 So the fact that one of the things that  
5 that industry -- or that organization did was  
6 advocate, yeah, that was certainly one of his roles.  
7 But they also -- and SIFMA continues to be a very  
8 important industry organization, you know.

9 Q. And SIFMA is --

10 A. That's what it changed to.

11 Q. Okay. So SIFMA is what was formerly  
12 known as the Bond Market Association?

13 A. The Bond Market Association, and then  
14 there was something for equities, and then they  
15 merged.

16 Q. Do you know where Micah Green is now?

17 A. I think he did something very wrong and  
18 is in -- I didn't read all the details, but I thought  
19 he was still doing this sort of stuff, but he did  
20 something -- I don't know exactly what it was, but he  
21 got in trouble.

22 Q. What did he get in trouble for?

23 A. I don't know what exactly it was. I  
24 Googled it. It might have been like a personal  
25 thing, so -- something, you know, something

1 unethetical.

2 Q. So -- go ahead.

3 A. I think he --

4 MR. CONRAD: Come on, tell us, Shelby,  
5 you know.

6 A. Was he a lawyer and he did something  
7 that disbarred him? I think he did something wrong.  
8 I was surprised because, I forget when he did that,  
9 but he messed up a good career.

10 Q. Well, is someone who is disbarred a good  
11 source of information for what market participants  
12 may or may not think?

13 MR. LEE: Objection --

14 MR. CONRAD: Objection.

15 MR. LEE: -- form; foundation;  
16 speculation; incomplete hypothetical.

17 A. I would just say all people make  
18 mistakes, and I'm not going to be the first one to  
19 say -- so I will say that he's on the record quite a  
20 bit and none of the -- the members of the Bond Market  
21 Association did not move to censure or disavow the  
22 comments that he made in 2004 or other things on this  
23 topic.

24 Q. Okay. Well, I might take out some of  
25 his statements in a minute, but I would like to just

1     jump back to paragraph 24 when we were talking about  
2     the sentence about the profits being achievable near  
3     the top of page 7, you state that, "Clearly, FTN had  
4     both the means and the incentives to make markets in  
5     PreTSLs." Do you see that?

6             A.       Yes.

7             Q.       What means did FTN have to make a market  
8     in PreTSLs?

9             A.       They had a sales force, a trader and  
10    some balance sheet.

11            Q.       Anything else?

12            A.       I'm sure there is a lot of smaller  
13    things, but those -- you really -- yeah, you kind of  
14    need those big ones.

15            Q.       Do you need anything else to make a  
16    market in a security?

17            A.       I mean, we -- we can get into the  
18    nitty-gritty about a telephone and Internet. But as  
19    I've described it, you know, in order to promulgate  
20    you would use the sales force to promulgate the  
21    inventory, to have the inventory you need a balance  
22    sheet, and to actually facilitate the trades, you  
23    need a trader. So that's sort of the building  
24    blocks.

25            Q.       In your view, where do market makers

1 typically exist?

2 MR. CONRAD: Objection to form.

3 MR. LEE: Form.

4 Q. Are they at banks, broker-dealers, or  
5 can you just hang up a shingle and say: I'm a market  
6 maker? How does it -- where do you find them?

7 A. You -- I guess you could. I'm -- my  
8 experience certainly sort of for writing this report  
9 and my experience is dealers are a pretty good  
10 source.

11 I mean, so that's my experience, so  
12 that's where I would say I found most of them.

13 Q. And that sentence that I just read, what  
14 incentive did FTN have to make markets in PreTSLs, in  
15 your view?

16 A. I cite it elsewhere in the report. It  
17 might have been Mr. Gusmus. They made -- and one of  
18 the reasons they hired de Saint Phalle is they made  
19 off a lot of money off the new issuance side.

20 So, in other words, they -- when we  
21 described how these things were made, a lot of times  
22 we just have been focusing on selling them to  
23 investors, and there certainly is fees associated  
24 with that, but for a while they also were making  
25 money from -- which I think is one of the reasons

1 document that you're citing for that proposition?

2 A. It is.

3 Q. Do you agree that this document doesn't  
4 refer to PreTSLs at all?

5 A. That's correct.

6 Q. And in the second paragraph of the  
7 article, there is a discussion about investment banks  
8 devoted tremendous resource to CDO production. Do  
9 you see that?

10 A. Yes, I do.

11 Q. Would CDO production be the same thing  
12 as a primary issuance of a CDO?

13 A. You are correct.

14 Q. Do you see any reference in this  
15 document to trading in secondary markets?

16 A. No. Well, they may.

17 MR. LEE: Take your time and read the  
18 whole document if you want.

19 A. Well, in the last paragraph on this  
20 page, the accompanying listing covers head CDO  
21 bankers and traders in the U.S. and Europe, so the  
22 traders would not have anything to do with the  
23 primary issuance.

24 And it says the CDO traders are in  
25 charge of buying and selling the securities for their



1 for itself.

2 A. Yes.

3 Q. Mr. Jankowski's name appears under the  
4 header "Head CDO Trader." Right?

5 MR. LEE: Same objection.

6 A. Yes.

7 Q. Do you know if First Tennessee is the  
8 same thing as "FTN" where it's referenced on page 2  
9 of the document?

10 MR. LEE: Calls for speculation. The  
11 document speaks for itself.

12 A. As market participants, that's what I  
13 would understand it to be, just as many of these  
14 other banks, it doesn't list the proper -- like Bank  
15 of America doesn't say Bank of America Securities;  
16 it's Bank of America.

17 Q. Do you know who prepared this document?

18 A. The actual author?

19 Q. Um-hmm.

20 A. It usually does indicate the actual  
21 author. I don't --

22 Q. There is not one listed here, is there?

23 A. No. They usually do.

24 I wonder if this is just because this is  
25 this one article. Usually they do say who the author

1 or Securitization News, maybe. I think it involved  
2 the Securitization Net, and it was quite a -- it was  
3 very expensive, also, which maybe you guys discovered  
4 when you were trying to get this, but it's not  
5 exactly -- I mean, it's not like it was some free  
6 piece of information that was flying around. People  
7 paid a lot of money to get that every week.

8 Q. Take a look at paragraph 25. You state  
9 that, "For original investors of PreTSLs, an  
10 effective way to exit their investments was to  
11 directly contact FTN or KBW." What does "exit  
12 investment" mean?

13 A. To no longer own it. To --

14 Q. To sell it?

15 A. Yeah, to sell.

16 Q. Have you examined the record to  
17 determine whether contacting FTN was an effective way  
18 to exit investments in PreTSLs?

19 A. No. It's from industry experience.

20 Q. So there is no basis for that statement,  
21 other than your general experience in the industry?

22 A. Well, if we were to go -- if you want to  
23 go back to the records, we could certainly pull --  
24 this is, once again, I have to look at all the  
25 records, but I saw the Bloomberg Exchanges and

1 trading records of Mr. Mosley, and you could go see  
2 all the different firms that he reached out to when  
3 he was transacting in PreTSL securities and you could  
4 see the performance of the different investment banks  
5 on bidding the paper. And I'm pretty darn confident  
6 that you'll find those are the most two effective  
7 bidders on the paper.

8 Q. Well, have you actually examined the  
9 record to determine whether contacting FTN actually  
10 was an effective way to --

11 A. I have not, but I would gladly do so, if  
12 given the information.

13 Q. But you didn't do it before you wrote  
14 your report, did you?

15 A. I did not need to because I'm that  
16 confident.

17 Q. As someone who worked for the trustee,  
18 do you know whether Sentinel actually was able to  
19 exit all of its investments in PreTSLs by contacting  
20 FTN?

21 MR. LEE: Objection; form.

22 A. Can you repeat back that? I think I got  
23 it, but...

24 (Record read.)

25 A. Oh, the bankruptcy trustee, so...

1     you know, going to bid your bonds, so it's -- I mean,  
2     even in -- in market makers, you can't -- you can't  
3     make an eternal promise of a price, so I'll bid the  
4     bonds and the expectation is you'll bid them in  
5     market context.

6             Q.       And FTN had the discretion in that  
7     instance that you're referring to in the phone call  
8     to pick the price on which it would bid the bond?

9             MR. LEE:   Objection; speculation.

10            A.       Yeah, all market makers have the ability  
11     to put the market out wherever they want to put it  
12     out. Nobody ever said you had to be happy where the  
13     market is for your securities and, in fact,  
14     Mr. Mosley, I think some of the ones he just didn't  
15     want to sell where he was at.

16            Q.       So in paragraph 25 you state that, in  
17     the second sentence, "FTN promised to stand by their  
18     securities," and I think you're citing the transcript  
19     of the phone call you were just referring to. Is  
20     that correct?

21            A.       That's correct, I think that's their  
22     words, too, "stand by."

23            Q.       Do you have any other support for that  
24     statement that FTN promised to stand by the  
25     securities?

1           A.       Not that I had a chance to review.

2           Q.       And do you know why that telephone call  
3 took place that day?

4                   MR. LEE: Objection; calls for  
5 speculation.

6           A.       I had seen it before. I obliquely  
7 remember something about I think it was a list. It  
8 may have been a list that actually that FTN wasn't  
9 included on erroneously by Mr. Mosley. But I would  
10 have to go review and listen.

11          Q.       And you said that the promise to stand  
12 by their securities was a quote from that telephone  
13 call. Are you sure?

14          A.       Not positive. I mean, that's -- that's  
15 used by many market participants, but I'm trying to  
16 remember Folan's exact -- it's either Jankowski --  
17 Jankowski also made, you know, representations they  
18 want to support their bonds, so, you know, which is  
19 typical.

20          Q.       So that's just your interpretation of  
21 what was said on the phone calls?

22                   MR. CONRAD: Objection to form.

23          A.       Yeah, I would have to go -- if you have  
24 it, I can read over it and...

25          Q.       So you're not sure?

1           A.       No, I'm not positive, but...

2                   MR. LEE:   If you have the transcript and  
3   you want to show it to him, he can look at it.

4                   MR. GUILBERT:   That's all right.   It  
5   says what it says.

6           Q.       Now, you also state in paragraph 25 that  
7   FTN made an effort to satisfy their customers'  
8   wishes.   What do you mean by that?   Wishes to do  
9   what?

10          A.       Yeah, I think Mr. Atkins and Mr. Pak  
11   referred to a customer accommodation and, ironically,  
12   market makers, when you're facilitating a market, you  
13   are accommodating customers, because everybody  
14   participating in the market is a customer buying and  
15   selling, so -- and so in the fixed income world where  
16   it's in this type of market where maybe it's a little  
17   less liquid, it -- it becomes -- in fact, maybe a  
18   little bit more personalized because it's -- they --  
19   they very well knew every single customer because it  
20   may be a hundred, 150.   So, you know, they probably  
21   knew how much the people owned, when they bought it,  
22   where they bought it at, as far as price level.

23                   So -- and they went out of their way to  
24   -- that's why it was easiest for them to match buyers  
25   and sellers together or to go find people who would

1 Q. Okay. And FTN wasn't obligated to  
2 satisfy their customers' wishes, whatever those  
3 wishes might have been, was it?

4 MR. CONRAD: Object to form; calls for  
5 speculation; calls for legal conclusion.

6 A. Yeah. I spoke to the earlier oral  
7 commitment just to Sentinel, so I feel that they were  
8 obligated by that conversation.

9 Q. At any price?

10 MR. LEE: Objection.

11 MR. CONRAD: Objection.

12 A. That's not -- I said that I believe that  
13 it was -- it's to bid it, to -- you know, in essence  
14 make a market. You know, may not be, like I said,  
15 it's not always where the customer hopes that market  
16 is, but it's there.

17 Q. And paragraph 26, what's the basis for  
18 the -- your statement on the first sentence of that  
19 paragraph?

20 A. There is data in --

21 Q. I guess the first two sentences.

22 A. There is data in the Olvany report for  
23 the first -- I mean, their trading activities,  
24 delineated as far as PreTSLs are concerned. And I  
25 did not see behaviors or activities on the part of

1 volume is being done.

2 Q. Okay. Let me ask you about  
3 paragraph 27. I don't see any footnotes for the  
4 proposition that FTN and KBW were the premier market  
5 makers for PreTSL securities and conducted much of  
6 the secondary trading. What do you attribute that  
7 to, if anything?

8 A. The secondary trading data, I believe,  
9 was -- I believe it's from the Olvany, sort of  
10 indications that they were the -- for a large amount  
11 of trading was seen. And I -- as far as the amount  
12 of inventory, that's not -- I'm not citing that, but  
13 I'm -- I would not expect anybody else to be holding  
14 inventory in PreTSLs of size. I mean, there may be a  
15 random bond or two in different investment banks, but  
16 they are territorial in a way with these types of  
17 products, and they feel that that's supporting  
18 somebody else's brand. So just didn't happen much.

19 Q. In paragraph 29, you say that Sentinel  
20 purchased PreTSLs from FTN and sold them back to FTN  
21 numerous times from 2004 to 2007. What do you mean  
22 by "numerous"?

23 A. Well, numerous is more than once,  
24 technically, and -- I mean, and we could just  
25 anecdotally just point to the -- the dubious -- well,



1 the combo note transactions that were -- I mean,  
2 that -- that's one example. There are -- there are  
3 more.

4 But that -- if you want to, we can just  
5 look at those. I know they did that starting in 2006  
6 and they kind of continued that practice, and it  
7 required them to buy them and then sell them back and  
8 then buy them again --

9 Q. There was only one of those, wasn't  
10 there?

11 A. I think they did a few, but I'm not -- I  
12 mean, we ought to look at the data.

13 Q. Well, what's the basis for this  
14 understanding? Is it the Olvany report or did you...

15 A. Yes, um-hmm, and then reviewing -- well,  
16 it's even in the transcripts from Folan and Jankowski  
17 talking about bidding the bonds from, you know, what  
18 their interactions were with Sentinel, so.

19 Q. Did you, in the course of your preparing  
20 your report, do an independent valuation of the  
21 transaction history in PreTSLs between FTN and  
22 Sentinel?

23 A. I did not view that to be -- given my  
24 experience in the space and the previous work done by  
25 Olvany and others, I figured that would be excessive.

1 I certainly could, if you would like me to.

2 Q. So you relied on the experts in the  
3 other matter?

4 A. And my experience in the space, yeah, as  
5 far as their behavior in that -- in their sector.

6 Q. Now, let's move to paragraph 30. And  
7 this is where you get really into your -- the  
8 substance of your opinion on the market making  
9 activities. And in the header before paragraph 30,  
10 you ask the question, "What is a market maker?"

11 Now, I don't see a definition of that  
12 term in your report, and I understand that you're  
13 rebutting Mr. Atkins' report and Mr. Pak's report,  
14 but how would you, sitting here today, define the  
15 term "market maker"?

16 A. Well, I -- I sort of was hoping that it  
17 came across a bit as a little bit of a definition in  
18 paragraph 31, but, so I'll read:

19 "Based on my experience as a participant  
20 in the securities marketplace, the fundamental  
21 activities of market making are: Willingness to hold  
22 inventory; regular contact with customers to both buy  
23 and sell securities; supporting and facilitating a  
24 market; and earning a profit from the bid-ask spread  
25 or other fees in the transactions instead of earning

1 securities, you're certainly not much of a market  
2 maker, so that's pretty darn important. So is the  
3 first two.

4 Those two together, by definition, sort  
5 of, are a big part of the third bullet, supporting  
6 and facilitating a market. So, like I said, they are  
7 very intertwined.

8 And, really, the fourth one about the --  
9 it could be a profit or a loss from the bid-ask  
10 spread, like we talked about earlier, but that caveat  
11 is trying to discern Mr. Pak was focused on  
12 proprietary trading.

13 The proprietary trading there -- it has  
14 to -- you know, they are in the market to extract  
15 profits. You know, they are using balance sheet, but  
16 it's a unique -- I would have to show you examples,  
17 but -- but I was trying to -- that's why it's in  
18 there, to kind of delineate from that.

19 Q. Isn't someone who is engaged in  
20 proprietary trading also demonstrating willingness to  
21 hold inventory?

22 A. Yes. Yes.

23 Q. So isn't proprietary trading  
24 fundamentally different from trading as a market  
25 maker as you define it?

1           A.       No. I -- that's why we -- I tried to  
2   cull that out. That's why there is so much angst in  
3   the paper every day about the Volcker Rule. It's --  
4   it's going to be a pain for regulators to -- you need  
5   a lot of details. You -- you need to do some  
6   examination to discern that, and it will be probably  
7   an expensive and painful things for regulators to  
8   be -- it can be done, but it's not going to be easy.

9           Q.       So it's possible that those who hold  
10   inventory for purposes of proprietary trading may not  
11   be market makers. Correct?

12          A.       It is possible that --

13                   MR. LEE: Objection; incomplete  
14   hypothetical; calls for speculation.

15                   THE WITNESS: Can you please read that  
16   one back.

17                   (Record read.)

18          A.       Yes.

19          Q.       Now, I'll ask you about these bullets  
20   specifically in paragraph 31 and maybe break them  
21   down a little bit. And the first bullet where you  
22   say "willingness to hold inventory," we've been  
23   talking a little bit about that, but how much  
24   inventory does someone engaged in market making  
25   activities have to hold?

1           A.       Once again, this is, you know, facts and  
2       circumstances and relative, so I would be  
3       hard-pressed to put up percentage or dollar amount  
4       because I wouldn't expect an FTN or a BB&T or a Key  
5       Bank guy to be able to pony up the same amount of  
6       balance sheet as J.P. Morgan or Goldman.

7                   But as a buyer in the space, you -- you  
8       know, you have to understand that. It primarily  
9       means that it's sort of goes hand in hand, you're not  
10      going to be an effective market maker if you don't  
11      hold enough inventory. Like if you don't have the  
12      capacity, you'll fail; you won't be an effective  
13      market maker.

14           Q.       Well, can an outsider looking in ever  
15      know whether an entity such as FTN actually is a  
16      market maker?

17                   MR. LEE: Objection; calls for  
18      speculation.

19           A.       Yeah, I don't know what other people  
20      could do, but I would say that at a spot instant in  
21      time, it would be -- I couldn't just give you one  
22      day's holdings report and say is this guy a market  
23      maker. You would have to either be a participant in  
24      the space or be able to look at a body of work and  
25      say and see the behaviors, and you could even

1 actually even ask other participants in the space and  
2 you could figure it out that way. And I believe  
3 that's what the regulators are going to -- they have  
4 to do it that way. They can look at trading records  
5 over time and then probably anonymous interviews of  
6 participants to figure out who is telling the truth.

7 Q. How long must a market maker hold  
8 inventory to be considered a market maker?

9 A. What do you -- can you clarify what you  
10 mean by how long? Like how long to hold one security  
11 or --

12 Q. No. For a particular security, do they  
13 have to hold that in inventory for a day? A month?  
14 A year?

15 A. There is no -- that would be, I think I  
16 used the term, you know, market making is dependent  
17 on the market itself, you know, the security itself,  
18 really the -- and the participants and the time,  
19 really, and the time. I mean, this particular  
20 marketplace -- and you can see it in the fact pattern  
21 here, PreTSLs were way more liquid than maybe they  
22 should have been to suddenly not very liquid.

23 So depending on when you did your  
24 analysis, my answer could -- could change because I  
25 bet you they didn't hold inventory very long at all

1 at some points and then probably held it very long in  
2 2007, so.

3 Q. If a market participant holds a lot of  
4 inventory in a particular security that it doesn't  
5 intend to trade, it just wants to hold the security,  
6 is it a market maker?

7 MR. LEE: Objection; speculation;  
8 incomplete hypothetical; form.

9 A. Yeah, I guess I would have to know what  
10 side of the market they are coming from and, you  
11 know, a little bit more detail on that. I mean, it  
12 sounded like you described an investor, but...

13 Q. So it may or may not?

14 A. Well, like you say, I -- at GE if I was  
15 a big fan of these and I -- I mean, I really wouldn't  
16 call that inventory necessarily; it's an investment.  
17 I mean, I could buy a bunch of them and not really  
18 intend to sell them again, so.

19 Q. So GE held these in inventory when you  
20 were at GE?

21 A. Yeah, see, I don't -- most buy-sell  
22 people don't refer to them -- refer to them as  
23 investments. But, I mean, I could sell them, but,  
24 you know, we don't think -- we don't think -- those  
25 -- that's a sell-side -- inventory is a sell-side

1 term.

2 Q. So when GE was holding PreTSLs in  
3 inventory --

4 A. Call it --

5 Q. -- was that market making activity or  
6 something else?

7 MR. CONRAD: Object to form. He just  
8 said twice GE didn't hold them in inventory.

9 A. Yeah, we held them in our portfolio, so.

10 Q. Okay. When GE held them in their  
11 portfolio, did that signal a willingness to hold  
12 inventory?

13 MR. CONRAD: Again, objection; GE  
14 wouldn't refer to this as inventory.

15 A. If we wanted to call them that,  
16 that's -- sure, we were holding something in our  
17 portfolio.

18 Q. GE wasn't a market maker in that  
19 security, was it?

20 A. I didn't have regular contact with  
21 customers to buy and sell. I said that would be one  
22 of the -- besides the regulations and whatnot --

23 Q. Okay.

24 A. -- the reason the sell side guys, you  
25 know, they have components to -- to be effective



1 market makers, and that may change in the future. I  
2 mean, it's -- there's, you know, PIMCO's -- some of  
3 the bond -- some of the large bond buyers could  
4 always, if they -- I guess they could become market  
5 makers.

6 Q. So the definition of market making may  
7 change over time?

8 MR. CONRAD: Objection to form.

9 A. Participants. The definition stays the  
10 same.

11 Q. Okay. Now, the second activity that you  
12 identify, and you just referenced it, was the regular  
13 contact with customers to both buy and sell  
14 securities. What do you mean by contact?

15 A. Well, that could be oral, electronic.  
16 Mr. Atkins kept referring to a previous case, which I  
17 actually -- I think back then they actually were  
18 mailing things, so, you know, it's -- it's an  
19 established mode of communication. In this time  
20 frame when I was in the market, the bulk is, believe  
21 it or not, phone -- phone and then Bloomberg, which  
22 is a type of email, and their inventory would have --  
23 that Folan refers to either went out on that email or  
24 he may have used regular Outlook email to probably  
25 send a spreadsheet over an email listing inventory

1 and prices.

2 Q. Well, don't most broker-dealers meet at  
3 least this criteria in regular contact with their  
4 customers to both buy and sell securities?

5 MR. LEE: Objection.

6 A. Sorry.

7 MR. LEE: Speculation; form; incomplete  
8 hypothetical.

9 Q. You can answer.

10 A. I would -- I would say based on my  
11 experience, yes, most of them, to be effective  
12 broker-dealers, should contact customers to buy and  
13 sell securities or they would probably go out of  
14 business.

15 Q. Now, your third activity that you list  
16 in paragraph 31 is supporting and facilitating a  
17 market. What does it mean to support and facilitate  
18 a market?

19 A. That -- and I believe I described it  
20 here, if you're -- if you are -- trading is one.  
21 Education is another. Providing input on, although  
22 they have to be careful with this, how to account for  
23 the securities, which FTN or -- I think it was FTN  
24 did that, you know, because Mr. Mosley was not using  
25 the preferred method of accounting for his income

1 notes. Providing financing would be another thing  
2 that -- anything that -- just like in -- to put it in  
3 layman's terms, if you're -- you know, you go into a  
4 Nordstrom's or whatever, anything that helps the  
5 customers, you know, make you you're a preferred  
6 retailer of choice for suits, for example, made for  
7 Nordstrom's, and so it's very applicable to -- I  
8 would say to facilitating and developing a market.  
9 And definitely in the OTC market, if you don't do  
10 those things, you risk not having any customers. And  
11 then we talked about new issuance and how they make  
12 money and...

13 Q. Now, I'm kind of late with the Christmas  
14 shopping this year. If I go down to Nordstrom's and  
15 ask a sales clerk to help me pick out a gift for my  
16 wife, would that sales clerk be supporting the market  
17 the way you define it?

18 A. Uniquely at Nordstrom's, I bet you,  
19 depending on what department you're in -- did you say  
20 a purse or something? Yes, I believe that you would  
21 be supporting the Nordstrom purse market for -- for  
22 sure and trying to make you a repeat customer so  
23 you'll come by and buy more.

24 Q. I know she wants a handbag this year,  
25 so.

1                   Let me ask you about the last one, last  
2     characteristic in 31. You say, "Earning a profit  
3     from the bid-ask spread or other fees in the  
4     transactions." And we've talked a fair bit about  
5     this, but I just wanted to make sure I understand  
6     what you mean by "other fees." What other fees are  
7     you talking about?

8                   A.       Well, that -- you could, you know, we  
9     have soft dollar transactions and you have mark-up  
10    that we -- we spoke of. Essentially, it's confining  
11    the -- anything tied to the trading essentially,  
12    meaning I'm not getting some -- not submitting you a  
13    bill every year for being the person to help you pick  
14    out purses, you know. It's really tied to the actual  
15    purchase of the purse, or the bonds in this case.

16                  Q.       Well, in FTN's case, do you know if FTN  
17    earned other fees from anyone that it transacted with  
18    in the secondary market for PreTSLs?

19                  A.       I would have to look at the data. I  
20    don't know. Not that I saw.

21                  Q.       How about -- in paragraph 32 you state  
22    that some attributes of a market maker's activities  
23    may depend, and the last thing you state is the  
24    market maker's capabilities. Is that the amount of  
25    capacity they have to engage in trades or is it

1 not on an exchange. And I believe that at least one  
2 of those actually refers to the equity markets, so  
3 which by definition -- I forget the debt market --  
4 the FINRA one, I'm sure it probably refers to equity  
5 markets. So they are very specific, so that's why I  
6 said market making in the context that we talked  
7 about and what we experience is sort of -- here is  
8 your universe is rather broad. I would say that the  
9 way that they were defining particular markets were,  
10 you know, very definitive particular markets they are  
11 speaking to and...

12 Q. Is it your opinion that the definition  
13 of market maker that's found in the Exchange Act is  
14 not talking about the FINRA rules; it's just talking  
15 about the Exchange Act?

16 A. Hm-hmm.

17 Q. Is it your opinion that that definition  
18 does not apply or did not apply to illiquid markets  
19 during the time period 2004 to 2007?

20 A. Well, that -- it would be helpful if we  
21 could refer to that and I could point out how it does  
22 or doesn't apply. Because I'm kind of guessing. I'm  
23 remembering parts that are from it, but do we have a  
24 copy of that so I can --

25 Q. I don't have a copy with me. I was just

1 "liquidity" because we talked about it's all relative  
2 in how it's defined. So, I mean, the SEC definitely  
3 is a regulator and oversees trading of securities.

4 Q. And oversees the debt markets, too,  
5 doesn't it?

6 A. Yeah, securities, yeah.

7 Q. If you look at the bottom of page 48,  
8 you see that Mr. Green states, "It's the  
9 Association's view that the bond markets need strong  
10 and sufficiently funded regulators to assure  
11 integrity, efficiency, fairness and safety."

12 A. That's very nice of him.

13 Q. Do you agree with him?

14 A. I mean --

15 MR. LEE: Objection.

16 MR. CONRAD: Objection to form; lacks  
17 foundation. It was a sentence out of a 100-page  
18 document, 80-page document and asked completely out  
19 of context whether you agree with it.

20 A. Yeah, I think he's just kowtowing to his  
21 audience, in all honesty.

22 Q. How would the Bonds Market Association  
23 kowtow to his audience?

24 A. When you're trying to get something that  
25 you want from somebody who has power. If you read

1 the rest of that sentence, it becomes more evident.

2 Q. What did he want?

3 A. He's leading with saying a nice thing  
4 and then he goes, "The scope and nature of  
5 regulation, however, should not dilute the market's  
6 dynamic ability to create a structure that best meets  
7 the needs of all participants for a fair and  
8 efficient system." So he's saying we want good  
9 regulation, but we want to be able to do what we  
10 want.

11 Q. Right. Do you know if after Mr. Green  
12 gave this testimony in Congress, whether Congress or  
13 the regulators gave Mr. Green what he wanted?

14 A. I'm not sure. I know there were a lot  
15 of things going on. I mean, I read this. So you  
16 asked me before and I said I wasn't sure about what  
17 different things they've asked for. I mean, TRACE, I  
18 don't know -- I don't know where the BMA stood on  
19 TRACE, but I know TRACE is now -- it's a fact of life  
20 and it's -- you can view it different ways. I think  
21 as an investor it's a good thing, but I may be --  
22 some of the investment banks that are also in the  
23 Bond Market Association probably are not big fans of  
24 TRACES, so, you know, he represents a big swathe of  
25 buyers and sellers or buy-sides and sell-sides.

1 Q. Okay. Put that to the side.

2 Did you want a quick break?

3 MR. LEE: Yeah, I want to take a quick  
4 break.

5 THE VIDEOGRAPHER: Off 4:28.

6 (Recess 4:28 p.m.- 4:43 p.m.)

7 THE VIDEOGRAPHER: Back on 4:43.

8 BY MR. GUILBERT:

9 Q. Mr. Vahey, would it be fair to say that  
10 you agree with Mr. Pak that there are basically three  
11 ways to transact in a secondary market that is  
12 illiquid -- transact in securities in a secondary  
13 market that is illiquid; you just draw different  
14 conclusions as to what that means as far as what  
15 market making goes?

16 MR. LEE: Objection. Are you pointing  
17 him to specific parts of Pak -- Mr. Pak?

18 Q. Look at paragraph 42 of your report.

19 A. Yes, I was going to say. Or how about  
20 my report?

21 Q. Yeah, your report.

22 A. Yes.

23 Q. Do you agree with Mr. Pak that those are  
24 the ways that securities generally trade in illiquid  
25 markets?



1 MR. LEE: Objection; lacks foundation.

2 A. Yes.

3 Q. Have you ever taken down a bond?

4 A. No, I've never been a dealer.

5 Q. You state in paragraph 43 that taking  
6 down bonds can place a strain on a dealer's balance  
7 sheet. Right?

8 A. Yes, that's what I say.

9 Q. Why does a dealer care about a strain on  
10 its balance sheet if it's acting as a market maker?

11 A. From your earlier line of questioning  
12 about risk, that's -- it's a risk to the company  
13 itself and a dealer -- dealers use their capital to  
14 do all sorts of things like provide financing, you  
15 know, they have probably a -- it's a bit of  
16 speculation here, but they probably have some sort of  
17 return on capital or cost of capital that they keep  
18 an eye on and that may not be the most effective --

19 Q. But you haven't been part of that  
20 process before, have you?

21 A. No. I've just analyzed companies in the  
22 space and that's sort of my perspective.

23 Q. In paragraph 4 you discuss one of the  
24 other methods that Mr. Pak discussed, and this is the  
25 running of a list process, and we talked a little bit

1 about this earlier today.

2 A. Which paragraph?

3 Q. Paragraph 44.

4 A. Oh, 44. Yes.

5 Q. Have you ever been involved in the  
6 process of receiving an offer wanted in competition  
7 or a bid wanted in competition?

8 A. Yes, I have.

9 Q. How does that process typically work?

10 A. Usually electronically. You would --  
11 well, I -- I've sent those out myself and seen them  
12 distributed, and I've also been on the receipt of  
13 other people's through a dealer.

14 So what would happen is to be in receipt  
15 of one, we would see one or multiple dealers put out  
16 a bid wanted in comp, for example, and it would be a  
17 spreadsheet or even just a listing of a bond and the  
18 amount of the bond and the time when bids were  
19 expected or needed. And if I were to want to be  
20 interested in that bond, I could call up any of the  
21 dealers that sort of send it out and say I'm -- I'm  
22 interested in that bond and where do you think it  
23 trades at and this is what I was thinking, that's  
24 what were they thinking, and we would work out how  
25 they were to be paid if we were to win that bond.

1           A.       To the earlier example, but the one  
2     where I explained you're looking at as inventory over  
3     multiple days, I mean, it's -- you're correct in  
4     saying it doesn't necessarily mean that, but it  
5     also -- once they buy it and if there isn't another  
6     person identified, they are going to hold it until  
7     they find somebody to buy it.

8           Q.       Okay. Well, let's talk about the third  
9     type of transacting, the matching up of buyers and  
10    sellers. Have you ever been involved in that  
11    particular type of activity?

12          A.       I'll caveat it with that it's very hard  
13    to know that because the -- a dealer doesn't -- a  
14    broker -- a broker-dealer does not have to tell you  
15    that he's necessarily doing that. They can do what's  
16    called a riskless principal transaction, where they  
17    technically are buying it in and out of their own  
18    portfolio for minutes, but that way I don't -- it's  
19    not -- I don't see a trade happening between me and  
20    MetLife when I was at GE, even though the trade  
21    essentially was between me and MetLife because they  
22    met -- they had both sides, so I -- but I would  
23    imagine all of the trading I've done that certainly  
24    must have occurred, yes.

25          Q.       So you personally were involved in the

1 matching up or someone else --

2 A. No, it's CMs. I'm a buy-side guy, so  
3 the broker-dealers are the ones who facilitate the --  
4 that's what they do, and like we talked about  
5 earlier, some just trying to do that and other ones  
6 do more than that, so.

7 Q. When you were at GE, how long did that  
8 process typically take to match up buyers and  
9 sellers?

10 A. Well, we might not -- you might not  
11 know, meaning it's -- it's impossible to know. I  
12 mean, they don't -- many times you don't even have --  
13 they don't ask any permission. The trade can just  
14 occur. They may have had a conversation in the  
15 morning with Met -- to give you my hypothetical, a  
16 MetLife guy said he wanted to buy credit card bonds,  
17 and then I happened to come to that same  
18 broker-dealer two hours later and say I'm looking to  
19 sell some credit card bonds.

20 And so he sort of already knows somebody  
21 is going to buy them, and he knows I have them. And  
22 essentially they're going to put the two of us  
23 together, but I -- my -- to me the trade's  
24 instantaneous. But...

25 Q. Well, in that circumstance the broker's

1 not really demonstrating a willingness to hold  
2 inventory and the security that's being traded, is  
3 he?

4 A. No. We talked about that earlier about  
5 some guys don't. You know, it's -- like I said, it's  
6 all relative on the market and the securities.

7 And that example I just gave you, there  
8 are people that do a lot of credit card stuff and  
9 they hold inventory. So it's easier for them to do  
10 that than folks who don't. So...

11 Q. Mr. Vahey, you've referenced the report  
12 of Mr. Olvany several times today. I'd like to put  
13 that in front of you as Exhibit 136.

14 (Exhibit P-136, Expert Report of John J.  
15 Olvany, marked for identification.)

16 Q. Is this the report you were referring to  
17 when you gave the testimony earlier?

18 A. I believe so.

19 Q. And this is the report you relied upon  
20 to learn more about the transaction history of  
21 PreTSLs?

22 A. Excuse me. Yes.

23 Q. Do you know Mr. Olvany?

24 A. No, I do not.

25 Q. Take a look at page 62 of the report,

1 they had anybody lined up right away. So it wasn't  
2 as if they weren't taking on risk.

3 So I'm -- I go back to my definition of  
4 market making. It actually seems to support what I  
5 was -- their willingness to hold in inventory,  
6 they're in contact, and they supported the market.

7 Q. And that particular example, would you  
8 agree that while they bought \$19 million from  
9 Sentinel, that Mr. Mosley wanted them to buy 40 to  
10 \$60 million?

11 A. Yeah. If I -- if you go back to that  
12 thing, it's -- I don't know if you would like to read  
13 that whole --

14 MR. LEE: Objection; lack of foundation.

15 A. Well, we could read the deposition if  
16 you have that handy, and you could read the whole  
17 context, because I think if we do that, you could see  
18 what their intent was there.

19 Q. Let's take a look at Appendix 2 to the  
20 report of Mr. Olvany. It's -- if you look at the  
21 bottom right-hand corner, you'll see the Bates stamp  
22 88822.

23 A. Sorry. What page are we on? I'm sorry.

24 MR. CONRAD: 88822. Appendix 2 --

25 A. Gotcha, yes.

1           Q.       You'll see that these are the documents  
2       that Mr. Olvany considered in preparing his report.

3           A.       Um-hmm.

4           Q.       It's a -- four pages long, four or five  
5       pages long. It's small font. And did you review all  
6       of these documents in preparing your report? You  
7       didn't, did you?

8           A.       No, sir.

9           Q.       After reviewing Mr. Olvany's report, did  
10       you ask counsel to review any of those documents  
11       listed in his report to make sure that your  
12       conclusion that FTN was a market maker was correct?

13                   MR. LEE: Objection to form.

14           A.       Once again, I was more using the market  
15       data that he had. I'm really not concerned with what  
16       his opinions were. And, to wit, what we were just  
17       discussing, if we were to read that deposition,  
18       de Saint Phalle, you could see how he made -- you  
19       know, he was making an interpretation, and I can give  
20       you my interpretation of the exact same deposition.

21           Q.       So it boils down to it, your  
22       interpretation and reason for your disagreement with  
23       Mr. Olvany is your reading of Mr. de Saint Phalle's  
24       deposition?

25                   MR. LEE: Objection; mischaracterizes

1 MR. LEE: Objection. He said he was  
2 happy to read the paragraph and you cut him off,  
3 but --

4 MR. GUILBERT: I don't think he needs to  
5 read the paragraph into the record, so.

6 MR. LEE: Well, you asked him the  
7 question --

8 MR. CONRAD: Well, he's entitled to put  
9 whatever testimony he wants on the record if it's  
10 responsive to a question. You asked him if he's  
11 aware of testimony. He said yes. He started to read  
12 it. You cut him off and then --

13 BY MR. GUILBERT:

14 Q. Okay. Read the paragraph.

15 A. I would just like to go on the record as  
16 saying that I believe that making markets is a verb,  
17 and a market maker is a noun. So, unfortunately,  
18 that -- you know, in their thing it's what -- must  
19 not have been an instance for them to use it in the  
20 form of a noun, but they were using the verb. So I  
21 made the small jump from, you know, if you could even  
22 call it that, from the noun to the verb form.

23 Q. So the answer is no, you're not aware of  
24 instances where the noun "market maker" was used by  
25 employees of FTN to describe its activities in the



1     PreTSL markets?

2             A.       Not that I've reported, no.

3             Q.       Mr. Vahey, I would like to hand you a  
4     document that was previously marked at  
5     Robert Ducklo's deposition and it is Ducklo  
6     Exhibit 54.

7             A.       Um-hmm, yes.

8             Q.       Is this the document that you were  
9     referring to regarding the \$20 million loan?

10            A.       I am, and it's -- I was referring to  
11    Wade -- I guess maybe it could be -- I don't know if  
12    Wade is a woman or a man, but that's the other key  
13    employee I was referring to.

14            Q.       And this is the finance agreement you're  
15    referring to in footnote 31 of paragraph 54?

16            A.       Yes.

17            Q.       Do you know where this document came  
18    from?

19                    MR. CONRAD:  Objection; calls for  
20    speculation.

21            A.       No.  It was just the documents to be  
22    considered --

23            Q.       You would agree that it's not signed,  
24    wouldn't you?

25            A.       It appears to not be signed, that's

1 correct.

2 Q. And you don't know who Wade Rhea is, do  
3 you?

4 A. Not specifically, no, I do not.

5 Q. Did you read Robert Ducklo's testimony  
6 about this document?

7 A. I do not think I did, no.

8 Q. Have you ever tried to enforce an  
9 unsigned \$20 million loan agreement?

10 MR. LEE: Objection; argumentative;  
11 calls for speculation.

12 Q. It's a simple question.

13 A. No, but I guess I would be speculating  
14 on the fact that I know the loan occurred, so maybe  
15 there is another document that we should be  
16 reviewing, but...

17 Q. But this is the document cited in your  
18 report. Correct?

19 A. It certainly is.

20 Q. Take a look at page 14. Paragraph 60 at  
21 the bottom that runs over to the top of page 15, and  
22 you reference a complaint filed by the SEC.

23 A. Yes, sir.

24 Q. I hand you what I'll mark as Plaintiffs'  
25 Exhibit 137.

1           Q.       In paragraph 72, you cite a prospectus  
2   for Bank of America's private label residential  
3   mortgage-backed securities?

4           A.       That's one, and I can give you a few  
5   others.

6           Q.       Let me ask you about the one you cited.  
7   I'll mark it as Plaintiffs' Exhibit 138, and this is  
8   just a excerpt of a very long document --

9           A.       Yeah.

10          Q.       -- and while you cited the .txt or the  
11   text version, I got the HTML version. But is this  
12   the document you're referring to? Can you tell?

13                   (Exhibit P-138, Document excerpt, marked  
14   for identification.)

15          A.       Yes, it's the '06-D, yup.

16          Q.       Turn to page S-36, which is the page you  
17   cited. And you see the header that says "Limited  
18   Liquidity"?

19          A.       I'm --

20                   MR. CONRAD: It's the last page.

21                   MR. LEE: It's the last of the three  
22   pages.

23          A.       Oh, there. I'm sorry. Okay.

24                   Limited -- limited liquidity provision,  
25   um-hmm.